CALIFORNIA **URBAN WATER** AGENCIES

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Mr. Lester A. Snow, Executive Director
CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, CA 95814

Attention: Rick Breitenbach

Policy Comments Related to the CALFED
Bay-Delta Program and Draft Programmatic EIS/EIR

Dear Lester:

This letter presents the policy comments of the California Urban Water Agencies (CUWA) on the CALFED Bay-Delta Program to date and is a companion letter to the Ag/Urban Technical Group's comments on the Draft Programmatic EIS/EIR for the CALFED Program.[1] We hope you find these comments helpful in further development of the program and in preparation of the revised Draft Programmatic EIS/EIR. Individual CUWA members may submit independent comments. Nothing in this letter is intended to conflict with or endorse the independent views of those agencies.

CUWA applauds CALFED in its efforts thus far in developing objectives, solution principles and its draft program that will help address the needs of all the stakeholders in the Bay-Delta system. We also applaud CALFED's efforts in reaching out to the stakeholder community and public and support continued efforts in this regard. We also support development of a draft preferred alternative[2] by the end of the year and further development of institutional and legal assurances which are critical to success of the Program. We believe CALFED must

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[1] The California Urban Water Agencies is an association of the State's twelve largest municipal water providers: Alameda County Water District, Central and West Basins Municipal Water Districts, Contra Costa Water District, East Bay Municipal Utility District, Los Angeles Department of Water and Power, Metropolitan Water District of Southern California, Municipal Water District of Orange County, City of Sacramento, San Diego County Water Authority, City of San Diego Water Utilities Department, City and County of San Francisco Public Utilities Commission and the Santa Clara Valley Water District.

[2] See discussion on Developing a Preferred Program Alternative

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continue to take a balanced approach to resolving the problems of the Bay-Delta, incorporating marketplace principles for resource utilization, regulatory and non-regulatory incentives for sound resource management, and investments in source water protection, water conservation, water recycling, surface and groundwater storage and improved conveyance to reduce conflicts among water uses within the system. With this approach all stakeholder interests can "get better together" and a fair and sustainable future for all Californians can be achieved.

CUWA's members are leaders in the field of urban water conservation and recycling, activities which are crucial to managing demands and diversifying supplies. CUWA's members will continue to heavily invest in these areas and we support CALFED's efforts to broaden the application of these techniques. While some of CALFED's objectives regarding ecosystem health, water supply reliability, water quality and system integrity can be partially achieved through water use efficiency measures, a totally "soft-path" approach ignores fundamental structural deficiencies in the system that impede the ability and reduce the flexibility to manage a limited water resource for multiple, balanced benefits. CALFED has correctly identified the variety of interrelating strategies necessary to address the complex problems of the system.

The balance of this letter is arranged by policy or program issue area.

Comments on *Developing a Draft Preferred Program Alternative - June 17, 1998*

Given the magnitude and complexity of the CALFED Bay-Delta program we recognize CALFED's need to stage decisions. While some elements of the program are clearly necessary and should move forward, the certain need for other program elements will be further analyzed and do not have the same widespread support. However, all stakeholders require that difficult and politically challenging decisions will be made when specified analysis is completed at defined decision points.

Recognizing some components of the three current alternatives require a better fundamental understanding of their benefits and effects, development of specific criteria under which they would be decided or "triggered" and development of assurances which would result in confidence that those components would be managed in ways intended, is necessary. For components of the program subject to staging, the revised draft PEIS/EIR should incorporate the timing, criteria and explicit mechanisms for decisions and offer alternative assurance structures for operation if the program element is acted on in the future. The final CALFED PEIS/EIR must contain enough detail (a) to allow programmatic NEPA/CEQA approval and (b) to obtain a programmatic Section 404 permit for the entire CALFED program, including those features that will be subject to future decisions or triggers and (c) to obtain comprehensive state and federal endangered species permits for operation of the program. In other words, the PEIS/EIR and the programmatic permit must analyze and approve, respectively, implementation of the CALFED program both with and without the elements subject to future decisions, thereby only requiring site specific analysis of triggered elements at the implementation stage. The PEIR/EIS must cover the range of operations for Delta facility and storage elements and analyze their system-

wide effects on fisheries and water quality. Project specific environmental documents would then only need to determine that these projects would operate in the range evaluated as acceptable in the PEIR/EIS. In other words, the triggering criteria must also withstand the "least damaging practicable alternative that meets the project purpose" test of Clean Water Act Section 404 (b) (1) and "no jeopardy" finding for system-wide impacts under the federal and state endangered species acts.

CUWA also supports development of a revised draft PEIS/EIR which has project level detail for early implementation of initial phases of the program which would allow for their expeditious implementation. CALFED should facilitate the regulatory permitting process and assist in the early implementation of projects that could provide water quality, environmental protection and enhancement and water supply benefits. To generate support and funding for the long term , CALFED must demonstrate incremental successes with regional projects that offer multiple benefits.

Development of Assurances

No CALFED alternative is complete without an assurances package that applies to all stages of the Program and provides for all possible solution components. Assurances must be developed so that each stakeholder community can be assured that actions promised as part of a solution are executed. It is important that assurances distinguish between guarantees of actions - versus guarantees of outcomes (results from these actions in combination with other variables). Actions can be guaranteed, outcomes cannot. For example, we can assure that substantial measures are taken toward restoration of the Delta ecosystem and set implementation objectives accordingly, however we cannot guarantee how it will recover as we have incomplete knowledge and control of system dynamics and biology. Therefore, we cannot guarantee indicators of success can be met. Recognizing this reality, CALFED will need to use an adaptive management strategy in its program to guide any changes in the strategies used to achieve success. Similarly in the area of water use efficiency, we can guarantee water conservation actions (installation of low flow toilets, new irrigation technology, auditing landscape use, etc.) but we cannot guarantee a specific result, i.e., what water use will be in a given future year for a given entity, as point of use consumption is not within the reasonable control of delivery entities. Assurances must therefore be devised to guarantee actions and incorporate strategies to adapt the actions should desired outcomes not be achieved.

CUWA members require some specific assurances for their participation in a CALFED Bay-Delta solution.

- Drinking Water Quality - CALFED must improve the source water for municipal supplies. Increasingly numerous and stringent drinking water standards demand that high quality waters be available to provide the best assurance that urban providers will be able to successfully treat source waters. Access to a high quality source for drinking water supplies is based upon the premise that it is more likely to reduce both the known and

unknown contaminants in drinking water supplies. The CALFED Bay-Delta Program should maintain high quality urban water supplies where they currently exist and improve urban water supplies diverted within and exported from the Delta. Urban water users need to be confident that the Program will allow them to achieve future drinking water standards with feasible, affordable technology. The basis for deciding on the need to improve source water quality with facilities such as an isolated facility must consider the feasibility and cost of alternative treatment technologies as well as potential improvements from pollution reduction and watershed management, and future regulations promulgated under the Safe Drinking Water Act. Assurances must provide that progress and funding on these elements of the solution necessary to improve drinking water quality proceed so that drinking water quality needs are met.

Given the evolution of understanding of health effects of drinking water disinfection byproducts, CALFED should adopt a long-term adaptive management approach to addressing drinking water issues . Such an approach will periodically evaluate conditions of water quality in the Delta, new standards to be promulgated and treatment technology and feasibility and the need for storage and conveyance modifications. In the meantime, the Environmental Protection Agency must provide municipal users with a date certain when it will promulgate Stage II standards under the Safe Drinking Water Act and assure sufficient lead time to construct the treatment facilities or Delta diversion facilities needed to meet those standards. To the extent future standards beyond Stage II may implicate the need for improved source water quality, additional decision triggers may need to be developed.

- Water Quality For Water Management - CALFED is anticipating an increase in recycled water use from 900,000 to 1.4 million acre feet annually by 2020, primarily in urban coastal areas. Implementation of recycling programs are currently being impeded by excess salinity in source water and recycled supplies. CALFED's program needs to reduce the salinity in water delivered to export areas if significant increases in recycling and conjunctive use are to be realized.

- In-Delta Water Quality - water quality for all beneficial uses within the Delta must be maintained or improved.

- Water Supply - CALFED needs to provide sound water transportation infrastructure which lowers the conflict between water users and the environment. CUWA is not looking for CALFED to resolve all supply problems statewide but rather to improve the reliability of current supplies and provide opportunities for meeting new supply needs through water conservation, recycling, improved water transfer opportunities and surface and groundwater storage development and management. CALFED should support projects in its Phase I implementation program that provide drinking water quality benefits, enhancement of conjunctive use, increase operation flexibility for fisheries protection and provide near-term improvements to supply reliability prior to decisions on

facilities which could reduce system conflicts.

- Ecosystem Restoration - CUWA supports the further development of the Ecosystem Restoration Program and its goals. Recognizing that the Ecosystem Program's adaptive management approach may require more flow or different flow regimes in the future, water users must have assurances that provide for insurance-like mechanisms to purchase water necessary beyond that which is contemplated in the initial phases of the Program, and sufficient off-stream environmental storage for capturing wet-year water needed for dry-year environmental purposes. "No surprises" protection must be provided to water users at the outset of Program implementation and must remain in place irrespective of what future decisions are made on staged facilities. Water users must have the protection that any additional Endangered Species Act or Clean Water Act based regulatory actions will be covered by the Ecosystem Program through facilities or other mitigation measures which allow maintenance of supply sufficiency and reliability while providing protection for environmental resources.

- Delta Needs - Any CALFED solution must sustainably improve the ecosystem in the Delta. In improving the ecosystem, CALFED must recognize and minimize the potential for redirected economic and environmental impacts within the Delta. CALFED's effort to create necessary new or restored habitat should not impede the function of remaining land or maintenance of supporting infrastructure for those uses. To that end, CALFED agencies will need to provide for these continuing uses and restoration of habitat with appropriate "take permits", safe harbor[3] and habitat conservation provisions under the federal Endangered Species Act.

Program Linkages

In the draft document Developing a Preferred Alternative, dated June 17, 1998 CALFED discusses an example of staged decision making and implementation of the CALFED program. CALFED's document provides a useful starting framework for structuring the progress of the program, and we commend its development. We concur with CALFED that "water management stability" during Stage I of the implementation program is essential. We also believe that near-term improvements to supply reliability are possible while environmental improvements are proceeding.

CALFED's document also discusses potential linkages for storage and conveyance to progress of the common programs. This draft enumerates a number of predefined conditions which must exist or be achieved before an isolated facility will be considered. Most of these appear appropriate. However, we have concerns regarding some of them. Item 2 a. on page 5

[3] Provisions protecting land users/owners ability to manage their lands who voluntarily improve habitat as a result harbor endangered or threatened species.

should recognize that drinking water regulation is not static and that Stage II regulations will likely not end the need to address drinking water source quality and treatment. It is anticipated that additional drinking water regulations will be considered and promulgated beyond Stage II, particularly in light of the 1996 Safe Drinking Water Act Amendments and the currently adopted candidate contaminants list. Trigger points may be needed when new regulation is promulgated. Item b. indicates a "limit on the amount of water that can be exported (linked to water year type)." This condition needs elaboration and discussion. If the intent is to assure that Delta outflow and in-Delta water quality standards are met, it should be so stated. In this case, assurances would be needed from others as well. If it is for other reasons, a rationale should be stated and discussed.

Item h. indicates "that construction of an isolated facility cannot proceed ahead of construction of new regional surface storage". CALFED has linked the need for an isolated facility to fishery and drinking water quality concerns, not water supply, which is the primary rationale for storage. This could be revised to read "... construction of an isolated facility cannot proceed ahead of construction of new regional surface storage *determined to be necessary to improve or maintain water quality in the Delta."* In other words, if an isolated facility is needed to address fishery and/or drinking water quality issues, and storage is necessary to address water quality concerns arising from the operation of an isolated facility, then linkage is appropriate. While some may argue new surface storage is an assurance an isolated facility or a transfer market will not harm their interests, this need could be handled in other ways. Otherwise, if there is no funding commitment for storage based on supply benefits, the potential program benefits for fisheries and/or drinking water quality of an isolated facility should not be forgone because there is no desire to pay for water supply benefits from new storage.

Section 4 a. of the draft discusses linkages for storage construction with measurable efficiency criteria and water supply available through marketing. While CUWA believes development of the conditions for and the development of a more open water transfer market are essential to the Program, the transfers linkage appear unrealistic and at a minimum must be carefully crafted. As indicated elsewhere in this letter, linkages must be to actions, not results which are often beyond the reasonable control of those required to take action. Further, regarding transfers, in a voluntary market as CALFED supports, it is difficult to imagine objective criteria with which one could judge whether transfer water was "available" and should be utilized versus water from a storage project. Given current physical constraints on the system, variation in the market price of water, location of both seller and buyer, term, timing and quantity of water available, reliability of supplies and water quality, valid comparisons between transfer water versus water available from storage would have to be made on a case-by-case basis. Reference in 4 b. to linking storage development to a "water transfer market ... in place" is ambiguous and needs clarification. CALFED's proposal is for creation of an information clearinghouse which will not change the market from what exists today. If a linkage is required then CALFED must be more specific as to what is contemplated for the "market". In item 5, linking progress on north of Delta conjunctive use to progress on surface storage in the region could result in the impediment of a valuable conjunctive use project if costs or environmental

restraints render surface storage infeasible.

In attachment 2 to the Draft Developing a Draft Preferred Program Alternative, an example of Stage I implementation is offered. While we recognize this as an example for discussion, we have some particular concerns with the section on Water Quality and Conveyance. We support the critical need to reduce toxicity for ecosystem purposes but also believe drinking water improvements are necessary. While significant improvement in bromide levels can be achieved with conveyance improvements to be decided in Stage II, CALFED should work with the State Water Resources Control Board and Central Valley Regional Water Quality Control Board to develop a drinking water policy during Stage I and seek to offset increasing degradation of source water quality due to growth in upstream demands and discharges into Delta tributaries. With five million more residents expected to occupy the Central Valley in the next twenty years, drinking water source quality will continue to degrade without affirmative responses. The drinking water policy should develop and implement methods to offset increases in salinity and organic compounds discharged to the Delta watershed during Stage I and beyond.

Regarding actions on facilities subject to staged decision making during or at the end of Stage I, we support development of environmental documentation, feasibility, field and pilot studies which would be necessary to apply for permits for such facilities as may be found necessary to meet CALFED objectives. While CALFED should not construct particular facilities unless specified conditions are met, the CALFED agencies, should consider, as appropriate, acquiring option agreements on key parcels of land to keep all options viable until final decisions have been made regarding facilities at the conclusion of Stage I.

Finance Issues

The CALFED Program will produce multiple benefits for stakeholders and the public. Beneficiaries and the public should therefore fund the Program through a combination of stakeholder and public funds in a plan mutually agreeable to a broad representative group. CALFED should be guided by the principle that those who seek specific benefits from a CALFED solution should be expected to pay for those benefits received. Water users funding for a portion of the common programs is appropriate based upon benefits derived. The cost allocation for these programs should reflect water agencies' substantial investments in conservation, water recycling and other common program activities. CALFED needs to reaffirm its commitment to credit financial support for the ecosystem program from water users contributions to the Category III program. Criteria should also be developed to credit CVP customers for ecosystem contributions made under the CVPIA.

CALFED needs to recognize that transitional funding is required to implement initial phases of the Program and to fund additional feasibility, planning, permitting and options purchases functions of program pending triggering of additional actions, is required. Monies will also need to be identified to fund early implementation actions. It is of the utmost priority that

sources for these funds be identified during the PEIS/EIR process in order that an orderly transition from the programmatic investigation phase to the early implementation phases can be made and information necessary for facility decisions subject to staging can be developed.

Institutional Framework Ecosystem Program Implementation

CUWA recommends that CALFED develop an entity to manage the ecosystem portion of the Program. This Program contemplates a non-regulatory, highly coordinated, well-funded, adaptive management plan be carried out using adaptive management principles that will enhance and protect the environment and minimize the need for regulatory interventions to protect fish and wildlife resources. To pursue such a Program, a management entity will be necessary. This entity's scope and orientation will be different from the perspectives of agencies now vested with regulatory authority to protect fish and wildlife resources, authority which should remain with those agencies. It is vital, however, that coordination of the action and management elements of the program be centralized so that coordination and accountability can be achieved. Some of the critical factors that lead to the recommendation that a new entity should be created and to the recommendations concerning its makeup and functions can be summarized as follows:

a. Market mechanisms must be employed to achieve and surpass regulatory requirements aimed at environmental improvement and to reduce conflict with consumptive water uses. The entity will need a budget and must constantly appraise and reappraise what actions will provide the greatest benefit at the most reasonable costs within available financial resources.

b. Assurance to stakeholders would be facilitated through mechanisms for risk assessment, risk management and risk indemnification. In this regard, the entity will act similar to an insurer rather than a regulator. Regulatory authority would remain vested with current authorities. They would exercise that authority only when the Program was unable to provide adequate protection. Should there be a need for new regulations affecting water supplies, the ERPP would be structured to provide those supplies or compensate their loss.

c. Responsibility and accountability for performance and pursuit of objectives would reside with a single entity endowed with adequate financial and technical means, thereby reducing overhead costs and the potential for inconsistent actions. It is critical to the success of the ecosystem program that there be a single responsible organization.

d. Ecosystem management, to be successful, must be adapted regularly and promptly to new scientific understanding and evaluation of prior effects. This new entity will be responsible for implementation of the adaptive management approach.

e. A single entity should be responsible for all funds available for Bay-Delta ecosystem programs and for prioritizing projects.

f. Monitoring to fill specified, policy-relevant data gaps must be driven by and integrated into decision making on an ongoing basis. The same entity holding the adaptive management authority must have ultimate responsibility in planning, coordinating and prioritizing the monitoring and study programs with input from resource agencies

g. The type of functions proposed can only be carried out successfully if there is broad-based stakeholder participation in governance of the entity.

The creation and use of a new ecosystem entity should be viewed as a positive re-invention of government necessary to meet the challenge of Bay-Delta restoration. No existing agency acting alone, and no group of agencies acting in concert, currently perform these functions in the way or to the extent we envision to be necessary. Certainly, none now involve the direct participation of non-federal or State agency stakeholders. The entity here envisioned is without precedent and will have to be invented by the governmental, water user, and environmental stakeholders. It should also be noted, however, that this entity would be for the express purpose of implementing the ecosystem recovery program and must not be assigned or burdened with other duties such as approving land use, water development or other changes within the system now under the jurisdiction of others.

CUWA believes that moving beyond the "command and control approach" of the regulatory status quo and developing a strong scientifically based adaptive management program will result in a better future for all stakeholders. However, to avoid regulatory actions, all stakeholders need to understand and acknowledge that we must respond effectively to environmental needs as they arise, rather than deferring action until crises overwhelm the opportunity for preventive measures. That is the vision that the new entity would carry out.

Analysis of Water Supply Reliability Effects of the Three Alternatives

In the Phase II report, CALFED discusses the water supply opportunities of each alternative, noting that storage is a factor in providing additional supplies for consumptive uses, and could provide flows for environmental purposes. The PEIS/EIR should specify the analysis and data needs necessary to quantify water supply impacts of an isolated facility, specifically in its reduction of future conflicts between fisheries and diversions.

Water Project Operational Requirements

CALFED needs to focus on this critical issue in developing the revised draft PEIS/EIR. Operational requirements should be developed which are less rigid and prescriptive and are tied more closely with and adaptable to actual biological mechanisms. Such requirements can

provide improved protection to environmental resources without unnecessary conflicts with consumptive water uses.

General Comments On Water Use Efficiency

CUWA supports the need for a strong water use efficiency program. We believe such a program will help achieve program goals of reducing the mismatch of supply and demands on waters of the Bay-Delta system. In order to fully realize the benefits of water conservation and recycling, significant local, regional, state and federal support will be necessary. CALFED's program should focus on providing technical and funding assistance for implementation of BMPs, water recycling and EWMPs which are cost effective on a statewide basis. CALFED should emphasize its approach is assurance that proper water conservation actions are implemented, and not pursue a numeric savings target approach as a measure of success or assurance.

A number of stakeholder groups have been meeting to develop a conservation assurance framework for urban water conservation. The California Urban Water Agencies and Environmental Water Caucus have produced a draft framework for urban assurances (CALFED Water Use Efficiency Common Program Proposed Urban Water Conservation Framework) and other urban interests have taken this basic framework and modified it to reflect their views. CALFED should sponsor a process with broad stakeholder involvement, utilizing the common elements of the basic frameworks as a starting point for discussion of the remaining substantive issues including:

1) Areal extent of program coverage.
2) Need for water based sanctions.
3) Wholesale delivery entity responsibilities.
4) Appeals of BMP certification decisions
5) Level of monetary sanctions for loss of certification.

A copy of the current draft framework under discussion by CUWA and the EWC will follow under separate cover. CUWA support for any assurances program for urban water use efficiency is contingent upon acceptance of the overall CALFED program. Additional policy comments on the water use efficiency program are attached.

CUWA looks forward to working with CALFED through public forums and the stakeholder process to develop a solution that improves and enhances the ecosystem, water quality, water supply reliability and reduces the vulnerability of delta functions.

Please contact me if you or members of the CALFED staff or consultants have any questions regarding these comments.

Sincerely,

Byron M. Buck
Executive Director

attachment

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